

# Notice of Allowability

Application No.

10/810,268

Examiner

Ngoclan T. Mai

Applicant(s)

ITSUKAICHI ET AL.

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/19/04.
2. ☒ The allowed claim(s) is/are 1-9 and 11-19.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 10/19/04, 6/28/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 4/18/05
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

*Ngoclan T. Mai*  
Ngoclan T. Mai  
Primary Examiner  
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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-9 and 11-19, drawn to a metal powder, classified in class 75, subclass 252.
- II. Claims 10 and 20, drawn to a thermal spraying method, classified in class 427, subclass 455.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using, such as melting the powder to form a cast component.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation between Ex. K. Bareford and attorney S. Vidas on April 5, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9 and 11-19. Affirmation of this election must

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be made by applicant in replying to this Office action. Claims 10 and 20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### **EXAMINER'S AMENDMENT**

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with applicant's attorney S. Vidas on April 18, 2005. The application has been amended as follows:

Cancel non-elected inventions claims 10 and 20.

#### **REASONS FOR ALLOWANCE**

7. The following is an examiner's statement of reasons for allowance:

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JP09-268361 does not teach the claimed primary crystal phase in the powder.

US 3,690,686 discloses a coating powder comprising 65-90% Mo, 7-25% Ni, 1-6% Cr, 0.3-1.5% B, 0.2-1.5% Si and balance Fe with small amount of carbon and Co (col. 2, lines 34-50).

US 4,949,836 discloses a wear resistant layer formed from a powder coating comprising 40-70% Mo, 0-10% Cr, 0.5-5.0% B, 0-1B, 0-1Ti and the remainder being Ni, Co or mixture of Co and Ni (Col. 1, lines 38-57).

US 5,063,021 discloses a mixture powder suitable for thermal spray coatings comprising 10-50% by weight nickel-boron-silicon alloy and the balance molybdenum meal, wherein the nickel alloy typically comprises 1-20 chromium, about 2 to about 5 boron, about 2 to about 5 silicon, about 0.1 to 2 carbon and the balance nickel (col. 2, lines 37-55).

US 6,376,103 discloses a molybdenum based composite powder for thermal spray applications comprising Mo-Cr alloy dispersion strengthened with molybdenum carbide, wherein the Mo-Cr can be combined with Ni-based or Co-based alloy to form a two-phase powder blended.

The difference between the prior art and the claimed invention is that there is no teaching of the powder comprising Mo, Cr, Co or Ni and B having the claimed proportions and the primary crystal phase in the powder. There is no motivation or suggestion to modify the powders of the prior art to derive powders having the composition and the primary crystal phase as claimed.


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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoclan T. Mai whose telephone number is (571) 272-1246. The examiner can normally be reached on 9:30-6:00 PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ngoclan T. Mai  
Primary Examiner  
Art Unit 1742

n.m.